

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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SPECIAL CIVIL APPLICATION No 445 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No
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PRAFUL B KANERIYA

Versus

PRAGNABEN MEHTA

Appearance:

MR JAYANT PATEL for Petitioner
No one appears for the respondents despite service of the notice.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/12/97

ORAL JUDGEMENT

The petitioner was appointed as Bus Manager in the pay scale of Rs.1400-2300 in the Municipality of Junagadh vide order dated 12.7.90 after being selected in an interview. On 15.1.91 the petitioner's work was certified to be good by the Chairman of the Transport Committee. The Chief Officer under orders of the President of the Municipality issued in order dated 21.1.91 posting the petitioner in the Water Works and one Shri Odedara, who is alleged to be the brother-in-law of the President of the Municipality i.e. respondent No.2 herein, was posted as Bus Manager. The petitioner has

raised a grievance in the body of the petition that in the Water Works he was posted as a Clerk. Pay scale of the Clerk is only Rs.950-1200. The petitioner has challenged this order dated 21.1.91 through this Special Civil Application filed on 22.1.91. On 23.1.91 notice was issued and an order was passed to maintain status quo. Thereafter, on 14.2.91 while issuing Rule and continuing the status quo order it was further ordered that in case the petitioner is not paid his salary, the respondent Municipality will pay the salary to the petitioner on or before 25.2.91. Mr.Patel points out that thereafter petitioner moved a Civil Application No.95 of 1991 and in this Civil Application an order was passed on 12.3.91 that the respondents shall not interfere with the petitioner's working as Bus Manager and will not allow the person posted as Bus Manager in his place to function as Bus Manager and it was recorded in the main Special Civil Application on 13.3.91 that in view of the interim order granted in Civil Application No.95 of 1991 there was no need to pass any orders regarding interim relief in the main petition. It is submitted that the petitioner is thus continuing as Bus Manager through out the pendency of this petition.

The record shows that no reply has been filed by the respondents and despite the service of the notice and Rule, no one has cared to appear on behalf of the respondents to oppose this petition. There is no dispute that the petitioner was appointed as Bus Manager, was working as Bus Manager, there was no grievance against his work - rather his work was appreciated. The impugned order dated 21.1.91 was passed posting him as Clerk in the Water Works, which carries lower pay scale in comparison to that of Bus Manager, it was not a case of simple transfer to another equivalent post and the impugned order does entail penal consequences including pecuniary loss, no allegation, leveled in the petition, has been controverted and the impugned order also does not give any reason as to why the petitioner was shunted and posted as Clerk from the post of Bus Manager and thus it appears to be a plain and simple case of arbitrary exercise of power in violation of the petitioner's right and in the grab of transfer order, the petitioner was made to suffer penal consequences without hearing him and without any justifiable cause. On the face of it, the impugned order dated 21.1.91 cannot be sustained in the eye of law.

The net result is that this Special Civil Application succeeds and the same is allowed. The impugned order dated 21.1.91 is hereby quashed and set

aside and it is ordered that the petitioner shall be deemed to be continuing as Bus Manager with all consequential benefits as if the impugned order dated 21.1.91 had never been passed against him. Rule is also made absolute accordingly. No order as to costs. Since the main petition itself has been allowed, there is no need for continuance of the interim order.

In case Civil Application No.95 of 1991 is still pending, the same should be treated to be disposed of in view of the order passed in the main matter.

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